

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

KEVIN DOUGLAS MCGEE,

Petitioner,

v.

DAVID SCHMITT,

Respondent.

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No. 4:17-cv-2366-NCC

MEMORANDUM AND ORDER

This matter is before the Court upon its own motion. On September 5, 2017, petitioner Kevin Douglas McGee filed a petition in this Court pursuant to 28 U.S.C. § 2254, challenging a June 8, 1988 state court judgment. In an order dated September 21, 2017, this Court noted that the petition appeared to have been untimely filed, and ordered petitioner to show cause why it should not be dismissed as such. In that order, petitioner was cautioned that his failure to timely respond would result in the dismissal of his case without prejudice and without further notice. Petitioner's response to the Court was due on October 12, 2017. To date, he has neither responded to the Court's order, nor sought additional time to do so.

After careful consideration, the Court concludes that the petition is time-barred. The Court will therefore summarily dismiss it pursuant to Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts, which requires this Court to summarily dismiss a § 2254 petition if it plainly appears the petitioner is not entitled to relief. *See Day v. McDonough*, 126 S. Ct. 1675, 1684 (2006) (a district court can dismiss an untimely § 2254 petition on its own motion after giving notice to the petitioner).

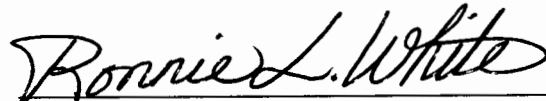
The Court has considered whether to issue a certificate of appealability. To do so, the Court must find a substantial showing of the denial of a federal constitutional right. *See Tiedeman v. Benson*, 122 F.3d 518, 522 (8th Cir.1997). A substantial showing is a showing that issues are debatable among reasonable jurists, a Court could resolve the issues differently, or the issues deserve further proceedings. *Cox v. Norris*, 133 F.3d 565, 569 (8th Cir. 1997) (*citing Flieger v. Delo*, 16 F.3d 878, 882–83 (8th Cir. 1994)). Because petitioner has made no such showing, the Court will not issue a certificate of appealability.

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 3rd day of November, 2017.

A handwritten signature in black ink, reading "Ronnie L. White". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE